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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
GENERAL METALS OF TACOMA, INC.

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY

Respondent.

PCHB No. 1006

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER.

This matter, the appeal of a \$250.00 Civil Penalty for allegedly causing or allowing an unlawful outdoor fire in violation of Respondent's Regulation 1, came on for formal hearing before the Pollution Control Hearings Board, Chris Smith, Chairman, W. A. Gissberg and Art Brown, in Lacey, Washington, on August 24, 1976. Ellen D. Peterson presided.

Martin H. Brashem, Vice President of Appellant General Metals of Tacoma, Inc. appeared pro se; Respondent Puget Sound Air Pollution Control Agency appeared through its attorney Keith D. McGoffin.

From testimony heard and exhibits examined, the Pollution

1 Control Hearings Board makes these

2 FINDINGS OF FACT

3 I.

4 Pursuant to RCW 43.21B.260, Respondent filed its Regulation 1
5 with the Pollution Control Hearings Board and official notice thereof
6 is hereby taken.

7 II.

8 On March 23, 1976, a Puget Sound Air Pollution Control inspector
9 observed dense black smoke emanating from the hull of a ship at the
10 General Metals yard on the Tacoma tideflats, 1902 Marine View Drive,
11 Tacoma, Washington. Three or four men were observed attempting to
12 extinguish the fire caused by the accidental igniting of residual oil
13 in the ship's hull. Though the plume from the fire was visible for at
14 least thirty continuous minutes, the Tacoma Fire Department was not
15 called to aid in extinguishing the fire. Nor did Appellant promptly call
16 the Puget Sound Air Pollution Control Agency. It was PSAPCA's testimony
17 that a call promptly made might have exculpated Appellant from liability
18 pursuant to Section 9.16 of Regulation 1.¹

19 1. The Board notes that Sec. 9.16 applies specifically to emissions
20 If it is PSAPCA's intent that its provisions be applicable to open burnin
21 situations, such intent should be clearly articulated in the Regulation
itself.

22 Section 9.16. Emissions exceeding any of the limits established by
23 this Regulation as a direct result of start-ups, periodic shutdown, or
24 unavoidable and unforeseeable failure or breakdown, or unavoidable and
25 unforeseeable upset or breakdown of process equipment or control apparatus
26 shall not be deemed in violation provided the following requirements are
27 met: 1) The owner or operator of such process or equipment shall
immediately notify the Agency of such occurrence, together with the
pertinent facts relating thereto regarding nature of problem as well as
time, date, duration and anticipated influence on emissions from the
source. 2) The owner or operator shall, upon the request of the Cont
Officer, submit a full report including the known causes and the
preventive measures to be taken to minimize or eliminate a re-occurrence.

FINAL FINDINGS OF FACT,

1 III.

2 A Notice and Order of Civil Penalty in the amount of \$250.00
3 was assessed against Appellant for violation of Section 8.02(1) of
4 Regulation 1, which prohibits outdoor fires in any area where the
5 Board has prohibited outdoor burning under Section 11.01; such areas
6 as defined by the Puget Sound Air Pollution Control Agency Board
7 include the Tacoma tideflats and Appellant's site.

8 IV.

9 Appellant's representative, Mr. Brashem, testified that the
10 activity which Appellant's employees were engaged in when the fire
11 occurred, i.e., the dismantling of a ship, is a "high risk business."
12 Burning torches, etc. are utilized which inevitably result in
13 occasional accidental fires.

14 Mr. Brashem further testified that the fire fighting equipment
15 which Appellant was relying on at the time of the cited accident
16 consisted of an undetermined number of fire extinguishers and water
17 hoses.

18 V.

19 Any Conclusion of Law hereinafter stated which may be deemed a
20 Finding of Fact is hereby adopted as such.

21 CONCLUSIONS OF LAW

22 I.

23 Appellant violated Section 8.02(1) of Respondent's Regulation 1.

24 II.

25 While Appellant's employees apparently made every effort to
26 control the fire once it began, the emission of dense black smoke for

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER - 3

1 a period exceeding thirty minutes is persuasive to the Board that
2 Appellant failed to have on hand adequate, protective fire fighting
3 equipment to bring to bear on such predictable though accidental fires.

4 III.

5 Any Finding of Fact which should be deemed a Conclusion of Law
6 is hereby adopted as such.

7 THEREFORE, the Board enters this

8 ORDER

9 The imposition of the \$250.00 penalty by the Puget Sound Air
10 Pollution Control Agency is affirmed. *16B*

11 DATED this 4th day of ~~September~~ ^{October}, 1976.

12 POLLUTION CONTROL HEARINGS BOARD

13 *Chris Smith*
14 CHRIS SMITH

15 *W. A. Gissberg*
16 W. A. GISSBERG

17 *Art Brown*
18 ART BROWN

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER - 4